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No. 752.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

[illegible] WALSH, COLLECTOR OF INTERNAL REVENUE,
Petitioner in Error,

vs.

FREDERICK F. BRIDGHAM.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States

OCTOBER TERM, 1920.

JAMES J. WALSH, COLLECTOR OF INTERNAL REVENUE, plaintiff in error,
v.
FREDERICK F. BREWSTER.

No. 742.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR PLAINTIFF IN ERROR.

This case is here on writ of error to review a judgment of the District Court granting a recovery of $17,756.79, paid under protest as income taxes for the year 1916.

THE FACTS.

The amount recovered includes four items, as to only one of which the Government now challenges the correctness of the judgment.

1. A conceded overpayment of $67.66 of the normal tax which was due to the defendant in error. This was not questioned in the court below and is not now questioned.

2. One item of the taxes involved was a tax assessed on $39,159 as profits realized by a sale of bonds

of the International Navigation Company. These bonds were purchased in 1899 for $191,000 and sold in 1916 for exactly the same amount. On March 1, 1913, however, their market value was $151,845. The Commissioner of Internal Revenue ruled that there was taxable income to the amount of the difference between this sum and the selling price of $191,000, and collected taxes on this basis. It is apparent that on the entire transaction there was no gain, since the bonds were sold for the exact amount of their cost, the only returns on the capital invested being the interest collected during the time they were held, which presumably was included in the income of the holder for the years in which received. In the case of *Goodrich* v. *Edwards*, No. 663, which will be under consideration by the court contemporaneously with this case, it has been conceded that where the selling price of property is not in excess of the purchase price there is no taxable gain or income. For this reason the Government can not insist that so much of the judgment as allows recovery for this item of taxes is erroneous.

3. Another item was a tax upon a stock dividend. Since the decision in *Eisner* v. *Macomber*, 252 U. S. 189, it is conceded that this tax was improperly collected.

4. In 1906 the defendant in error purchased bonds of the International Mercantile Marine Company at a cost of $231,300. These bonds were sold in 1916 for $276,150. On March 1, 1913, however, their value

was much lower than the original cost and they were worth only $164,480. The Commissioner of Internal Revenue ruled that the difference between this sum and the selling price was taxable gain or income, and accordingly collected taxes on $111,670. In this transaction the actual gain realized was the difference between the selling price, $276,150, and the cost price, $231,300, or $44,850. Since the value of the property on March 1, 1913, was only $164,480, it can not be said that any part of the increase in value occurred before that date. While it is conceded, therefore, that the defendant in error was not properly taxable on the difference between the March, 1913, value and the selling price, it is contended that he was taxable on the difference between the purchase price and the selling price, or $44,850.

HOLDING OF THE COURT BELOW.

The court below granted a recovery for the full amount claimed upon the ground that profits realized from the sale of capital assets are not income, and that, so far as the act of Congress undertakes to tax them as income. it is unconstitutional. This holding is now challenged.

From the statement of facts made above, however, it follows that the judgment itself is now questioned only to the extent that it denies the Government the right to a tax on $44,850, or the price actually realized on the sale of the International Mercantile Marine Company bonds.

BRIEF.

The argument of the Government in support of the constitutionality of the act taxing profits resulting from the sale of capital assets and the right of the Government to treat as income for the year in which the sale is made that portion of such profits actually realized over and above the purchase price which represents an increase in value accruing between March 1, 1913, and the date of sale, is fully presented in the Government's brief in *Goodrich* v. *Edwards*, No. 663, mentioned above. The argument, therefore, will not be repeated, but that brief is referred to and adopted as the Government's argument in this case.

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be modified to the extent of denying a recovery for the taxes on the item of $44,850 above mentioned.

Respectfully submitted.

WILLIAM L. FRIERSON,
Solicitor General.

MARCH, 1921.

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